

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JERROD BAILEY,

Plaintiff,

-v-

SUPERINTENDENT GRIFFIN, et al.,

Defendants.

DECISION and ORDER
12-CV-1196S



Plaintiff Jerrod Bailey, who is proceeding *pro se*, has filed a second amended complaint, a motion to appoint counsel and a motion for leave to proceed *in forma pauperis*. (Docket Nos. 17-19.) Plaintiff, however, was granted permission to proceed *in forma pauperis* previously and filed an amended complaint (Docket No. 9) previously. The amended complaint has been reviewed by the Court pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A, and directed to be served against those defendants who had not been dismissed from the amended complaint upon review--Myers, Grisbe, Harvey and Robycki.¹ Summonses have been issued for service by the United States Marshals Service.

Because plaintiff has already filed an amended complaint, he cannot file a second amended complaint without first seeking and obtaining permission from the Court to file a second amended complaint. *See* Fed. R. Civ. P. 15(a)(1)-(2). The Court, therefore, cannot consider plaintiff's second amended complaint at this time, and the Clerk of the Court is directed to strike it from the docket.

¹Defendants Griffin, Morales, Senora, Sheahan, Skully, Onesa and White were dismissed without prejudice because the amended complaint did not contain allegations against them. (Docket No. 16, at 3-4.)

If plaintiff wishes to seek permission from the Court to file a second amended complaint he must file a motion for leave to file a second amended complaint and attach a copy of the proposed second amended complaint to the motion. *See* Fed. R. Civ. P. 15(a)(2); L. R. Civ. P. 15(a).² Plaintiff is advised that the proposed second amended complaint must be a complete pleading superseding the amended complaint in all respects and that no portion of the prior pleading may be incorporated by reference into the proposed second amended complaint.


Moreover, because plaintiff has been granted permission to proceed *in forma pauperis* previously and because the Court has denied previously plaintiff's motion for appointment of counsel (Docket No. 16, Order, at 5), plaintiff's motion to proceed *in forma pauperis* is denied as moot, and plaintiff's motion for appointment of counsel is denied without prejudice for the same reasons set forth previously (*Id.*). Accordingly,

IT IS HEREBY ORDERED that the Clerk of the Court is directed to strike plaintiff's second amended complaint from the docket;

FURTHER, that plaintiff's motion to proceed *in forma pauperis* (Docket No. 19) is denied as moot, and plaintiff's motion for the appointment of counsel (Docket No. 18) is denied without prejudice.

SO ORDERED

Dated: December 2, 2013
Rochester, New York



HON. FRANK P. GERACI, JR.
United States District Judge

²The motion should notify the Court what changes plaintiff intends to make in the second amended complaint and why he believes permission to amend the complaint a second time should be granted.